The Seattle Decision on Race and Public Schools: Implications for Special Education

David E. Barrett
Antonis Katsiyannis

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Abstract

ln a recent ruling, the U.S. Supreme Court in Parents v. Seattle (Parents Involved, 2007) determined that race cannot be the sole factor in the assignment of children to public schools. The court also identified the conditions which would justify the use of race in assigning children to schools. In this article we (a) provide a historical background to the Supreme Court decision, (b) summarize the facts and analyze the reasoning of the majority and dissenting opinions in the decision, and (c) address the implications of the Parents v. Seattle decision for the field of special education. We suggest that at present the Court appears determined to weight substantive educational gains for students more heavily than social integration in evaluating the constitutionality of school policies aimed at equalizing opportunities for students.

Keywords

Supreme Court decisions, race, special education, Seattle, bussing

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Introduction

On June 28, 2007, the United States Supreme Court announced its decision in *Parents v. Seattle.* In this case, the Court addressed the issue of whether integration plans voluntarily instituted by school districts in Seattle and Louisville were in violation of the Fourteenth Amendment to the Constitution. The Court ruled that race cannot be the sole factor in the assignment of children to public schools; specifically, the Court upheld the contention of petitioners that assignment to schools solely on the basis of race violates the Equal Protection Clause of the Fourteenth Amendment. In this article we examine the Supreme Court's ruling in *Parents v. Seattle* and its implications for public schools with particular attention to special education.

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Historical Background

A variety of federal laws such as the Civil Rights Act of 1866 and Title VI of the Civil Rights Act of 1964 along with the Equal Protection Clause of the Constitution (14th Amendment) have provided the legal foundation to address issues of discrimination based on race. The landmark Supreme Court case, *Brown v. Board of Education* (1954), overturned the separate-but-equal rationale in *Plessy v. Ferguson* (1896) and adopted what so eloquently Justice Harlan had stated in his dissenting opinion in *Plessy*. Harlan had argued that the Constitution is color-blind, and neither knows nor tolerates classes among its citizens and that separation of races was "a badge of servitude." In *Brown v. Board of Education of Topeka* (1954), the Court ruled that "in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal." Thus, segregation of children in schools solely on the basis of race was a denial of the equal protection of the laws under the Fourteenth Amendment. The Court further stated that education was perhaps the most important function of state and local government, particularly in light of compulsory school attendance laws and funding. The Court revisited the issue of segregation in *Alexander v. Holmes County Board of Education* (1969) and required that all school districts operating in states that had legal segregation in 1954 must immediately become unitary; regardless of approach, whether rezoning, busing, or other means, schools had to integrate immediately without delay (Alexander & Alexander, 1998, p. 455).

In recent years, the Supreme Court has ruled on numerous occasions on race and education related issues, rendering finely nuanced opinions and split decisions, a distinct difference from the unanimous decision in *Brown v. Board of Education*. In all decisions the court has recognized the right of states to address past discrimination. However, the Court has consistently rejected racial "quotas," has become increasingly stringent in evaluating the discretion of school officials to achieve and maintain racial balance and in judging whether these efforts represent a "compelling government interest," and has repudiated the notion that race can or should be the sole factor in the government's differential allocation of costs and benefits to citizens.

For example, in the affirmative action case *Regents of the University of California v. Bakke* (1978), at issue was whether the University of California at Davis Medical School

could admit applicants under two separate admissions systems, one for self-identified minority applicants and one for non-minority applicants. The academic qualifications required for non-minority students were significantly more stringent than those for minority applicants and the plaintiff, Bakke, contended that he would have been accepted under the minority admissions program. The Court ruled that the guarantees of the Fourteenth Amendment "extend to all persons," that the University policy of keeping separate admissions systems for persons based on race was unconstitutional, and that Bakke be admitted to the Medical School. However, the Court also re-affirmed its commitment to racial equality, stating that the State has a "legitimate interest" in ameliorating when possible the effects of identified discrimination. Indeed, in *Grutter v. Bollinger* (2003), the Court upheld the University of Michigan's law school affirmative action policy favoring minorities, asserting that the law school's policy allowed for a "flexible" and individualized assessment of applicants' talents, backgrounds and potential for contributing to the academic community. In contrast, in *Gratz v. Bollinger* (2003), the Court ruled that the undergraduate admissions policy at Michigan, which awarded points to an applicant's rating score based on race, was unconstitutional as it did not provide for "individualized consideration" of all students.

The emphasis on equal educational opportunity has been the cornerstone argument that has linked the efforts to address the needs of those with disabilities to the challenges faced by minority students. As Yell (2006) noted, early advocates for students with disabilities argued that students with disabilities were also a class of people whose rights had been violated due to unacceptable differential treatment and exclusion. Specifically, before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not fully met because children with disabilities did not receive appropriate educational services, were often excluded entirely from the public school system and from being educated with their peers, did not get diagnosed as having a disability, and often bore the expense of providing services (Section 1400 (c) (2)). Further, Congress, in the most recent reauthorization of the Individuals with Disabilities Education Act (IDEA), stated that "educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." (Section 1400 (c) (1)).

In sum, the U.S. Supreme Court has demonstrated, over the last half century, a commitment to protecting the rights of those Americans who have historically been excluded from full participation in public education. However, with this commitment to protecting the interests of previously disenfranchised classes, the Court has had to recognize competing interests; including the challenges of groups of individuals who believe that their right to self-determination in the area of education has been limited. The collision of these competing interests was the central issue in *Parents v. Seattle* (2007).

Parents v. Seattle

Facts of the Case

In the present case, respondent school districts voluntarily adopted student assignment plans that relied on race to determine which schools certain children would attend. The Seattle district, which had never operated legally segregated schools or been subject to

court-ordered desegregation, classified children as white or nonwhite, and used the racial classifications as a "tiebreaker" to allocate slots in particular high schools. The Jefferson County (KY) district was under federal court oversight including forced busing from 1975 until 2000. In 2001, the district adopted its plan classifying students as black or "other" in order to make certain elementary school assignments and to rule on transfer requests. The plan adopted required that African-American enrollment in most public schools be between 15% and 50% in an effort to match the composition of the whole Jefferson County, which is 60% white and 38% African American. Petitioners, Seattle parents (Parents Involved) and the mother of a Jefferson County student, filed suits alleging that allocating children to different public schools based on race alone violates the Fourteenth Amendment's Equal Protection Clause. In both cases, lower courts ruled that programs were designed to "serve a compelling government interest' in maintaining racial balance.

The Court further stated that education was perhaps the most important function of state and local government.

Decision

Chief Justice Roberts delivered the opinion of the Court, in which justices Scalia, Thomas, and Alito joined. Breyer filed a dissenting opinion, in which Stevens, Souter, and Ginsburg joined. Kennedy filed a separate, concurring opinion. The Court ruled that race cannot be a factor in the assignment of children to public schools as it violates the Equal Protection Clause of the Constitution. Specifically, the Court concluded that the districts failed to justify the extreme measures they took in their effort to achieve racial balance. According to the Court, the measures employed by the school districts involved "discriminating among individual students based on race by relying upon racial classifications in making school assignments." The districts failed to demonstrate that such classifications were "narrowly tailored" to achieve a "compelling" government interest. The school districts also failed to establish that these efforts were intended to remedy past intentional discrimination (the Seattle schools were never segregated by law or subject to court-ordered desegregation whereas a court desegregation decree for the Jefferson County schools had been lifted). Finally, the district racial classifications aimed for racial balance alone rather than pedagogical plans to improve educational benefits. In this regard, the Court noted that "the minimal effect these classifications have on student assignments suggests that other means would be effective."

In rendering the deciding vote for the majority ruling, Justice Kennedy also appeared to endorse limited discretion afforded to school officials to address racial makeup and adopt general policies to encourage a diverse student body. Officials in these cases "are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion based solely on a systematic, individual typing by race." Justice Breyer, in dissenting from the majority ruling, reflected on the nation's history of racial division and discrimination. For Breyer, "to invalidate the plans under review is to threaten the promise of *Brown*. This is a decision that the Court and the Nation will come to regret." He concluded that the ruling would take from the school districts "the instruments they have

used to rid their schools of racial segregation, instruments that they believe are needed to overcome the problems of cities divided by race and poverty."

Implications for Special Education

The response of many educators and academics to the Seattle decision has been understandably negative, with some viewing the Court decision as an assault on the tradition of the integration movement of the second half of the twentieth century (see Bryan, 2007) and others questioning the historical validity of a "race-neutral" approach to educational equality (Anderson, 2007).

However, while it is tempting to interpret the recent Court ruling as limiting the power of school districts to provide compensatory educational experiences for the historically disadvantaged, such an analysis may be overly simplistic. In fact, the *Seattle* decision is consistent with a recent governmental pattern of elevating individual educational benefits over social gains when considering educational policy. Such a trend has occurred not only in the arena of race and education but also in the arena of special educational policy.

It is important to note that a significant element of the Seattle case was that the case involved a child with dyslexia and Attention Deficit-Hyperactivity Disorder (ADHD). Initially, this child had been accepted into a selective public school program in which he could receive individualized, "hands-on" instruction. However, because of his race, he was denied admission to the program by the school district. The fact that this particular situation was highlighted in the majority opinion suggests that the present court is unwilling to sacrifice individual rights of citizens (e.g., the right of a child with special needs to be educated in an appropriate environment) solely to achieve racial balancing.

Educational Benefits

This emphasis on individual educational benefits was emphasized in the reauthorization of IDEA. In IDEA 2004, Congress required states to establish goals for the performance of children with disabilities that "are the same as the State's definition of adequate yearly progress including the State's objectives for progress by children with disabilities." Further, states have been required to "address graduation rates and dropout rates, as well as such other factors as the State may determine; and are consistent, to the extent appropriate, with any other goals and standards for children established by the State..." [Section 1412 (a) (15)]. Indeed, Individualized Education Programs (IEP) provisions require that annual goals "enable the child to be involved in and make progress in the general education curriculum." [Section 1414 (d) (1)(A)(ii)]. Further, decisions made by hearing officers, must be made on "substantive" grounds based on a determination of whether the child received a free appropriate public education as opposed to the over "reliance" on procedural matters. Procedural violations may constitute denial of Free Appropriate Public Education (FAPE) if they interfere with the child's right to FAPE, significantly impede the parents' ability to participate in the decision, or cause a deprivation of educational benefits [Section 1415(f)(3)(E)(i)].

Similarly, case law on appropriate education still adheres to the standard established in *Board of Education v. Rowley* (1982). In *Rowley*, the Court ruled that a child with a disability is receiving an appropriate education if procedural safeguards have been observed and the IEP services are carefully designed to confer some benefit. In addition, however, recent rulings have ruled that a child

must receive meaningful benefits as opposed to *Rowley*'s "some benefit". Specifically, cases such *Polk v. Central Susquehana Intermediate Unit 16* (1988), *Cypress-Fairbanks Independent School District v. Michael F.* (1997), and *Pace v. Bogalusa City School Board* (2003) have concluded that IEP services must confer more than a minimum educational benefit; services must result in meaningful educational benefits (Yell, Katsiyannis, & Hazelkorn, in press).

Educational Benefits versus Incidental Social Benefits

Court cases have also emphasized the need for substantive educational outcomes over incidental social benefits. Specifically, in *Hartmann v. Loudoun County Board of Education* (1997), the parents of a child with autism, a developmental disorder characterized by significant deficiencies in communication skills, social interaction and motor control claimed that the school district's proposed placement in a special class failed to comply with the mainstreaming provision of IDEA, which states that disabled children should be placed with their non-disabled peers "to the maximum extent possible." The court ruled in favor of the school district, indicating that the meaning of the phrase "to the maximum extent possible" specified in IDEA does not translate to placement in a regular education classroom for an individual who is not academically progressing. The court used standards established in an earlier court decision, *DeVries v. Fairfax County School Board* (1989), which ruled that a child does not have the right to a general education classroom if (a) the child would not receive an educational benefit from mainstreaming into a regular class; (b) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or, (c) the child is a disruptive force in a regular classroom setting.

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Least Restrictive Environment(LRE)

IDEA also requires that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" [Section 1412 (a)(5)]. Nonetheless, to enhance the success of students with disabilities in integrated settings, IDEA amendments in 1997 also required the participation of general education teachers in IEP meetings so that they might provide input regarding "the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel …" [Section 1414 (d) (3)(C)].

Minority Overrepresentation – Continuing Concerns

While the IDEA has had a monumental effect in redressing many inequities, there remain legitimate concerns about overrepresentation of minority students in the catego-

ries mental retardation and emotional/ behavioral disorders, misclassification, unnecessary isolation from same age peers, and low-quality curriculum and instruction. Further, some argue that special education placement often results in de facto segregation of special education students (Royster, 2005). These lingering concerns over unjustifiable segregation of students have prompted Congress to require states to take steps "to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities" [Section 1400 (12)].

Conclusions

The present Court is on record as emphasizing substantive educational benefits over arbitrary assignments based on race alone when evaluating the constitutionality of laws and regulations relating to educational policy. In extension, this emphasis has implications for special education, particularly with regard to a free appropriate public education in the least restrictive environment. As evident by the provisions in the most recent amendments to IDEA and case law, mere access to educational services for those with disabilities is not enough; substantive educational benefits are expected. With this renewed emphasis on substantive educational outcomes, it is our hope that special education services will be seen as a positive intervention for those in need, rather than being viewed as an unjustified means of segregating students of different backgrounds and thus depriving them of equal educational opportunities (Royster, 2005).

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We recognize, of course, the controversial nature of the *Parents vs Seattle* opinion. For some, the Court's dismissal of "racial balancing" for its own sake is both misguided and unconstitutional; Justice Breyer, for example, in his dissenting opinion pointed out the Court's long-standing commitment to "race-conscious" measures as a means of achieving school integration. For others, even proponents of race-based remedies, the use of racial classifications as a means of increasing educational and economic opportunities for minorities is inherently problematic, bringing fellow citizens into conflict over increasingly scarce resources (Laird, 2005). And for still others, *Parents vs Seattle* may be a reasonable and just ruling but one that fails to address the underlying social issues that result in disparate educational and economic outcomes; see, for example, Steele's (2006) analysis of the complexities of the 2003 *Grutter* decision.

Still, it is our position that the most important implication of the present opinion is that in the future, public educational programs which attempt to make distinctions on the basis of race in order to meet governmental objectives will have to identify specifically the educational benefits to be derived from the program. In the *Seattle* case, the school district did not specify the educational benefits to be derived from the "racial diversity" that would result from the school district's program. Chief Justice Roberts concluded his opinion by noting that "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity'." While skeptics may view his words as a death knell for the future of government based remedies of historical injustices, a more optimistic interpretation is that the present Court

has made a serious statement that substantive, individual educational benefits are a compelling government interest and must be protected by local educational agencies and institutions. Certainly from the perspective of special education, the emphasis on substantive, individual educational benefits for all students is a worthy objective.

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About the Authors:

David E. Barrett is Alumni Distinguished Professor of Teacher Education at Clemson University.

Antonis Katsiyannis is Professor of Special Education at Clemson University.